

IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF UTAH, IN AND
FOR UTAH COUNTY.

No.2888 Civil.

PROVO RESERVOIR COMPANY,
a corporation,

Plaintiff,)

Joint answer of following

VS,

named defendants, to wit:

PROVO CITY et.al.

Defendants. 0

Joseph Hatch, Emma Whertritt, Uliac Abegglen, Joseph F. Abegglen, Chris Mitchel, Felix Martin, J.C. Peterson, John U. Buehler, Frederick Remund, Jesse Nelson, Jesse Nelson Jr., George Nelson, Alfred L. Alder, James T. Alder, W.W. Alder, William N. Casper, J.M. Casper, James Casper, George R. Carlile, William Winterton, Hyrum S. Winterton, Wm H. Winterton, William L. Van Wagoner, Mrs E.L. Hanks, E.L. Brown, George H. Edwards, John B. Powers, John O. Edwards, P.W. Edwards, Joseph S. Wright, Joseph R. Murdock, John B. Powers, and Elizabeth Powers, as executors of the last will and testament of John Powers, deceased, William Daybell, John M. Richie, Henry F. Watson, George Daybell, George W. Daybell, Fred Daybell and Robert Daybell, as partners doing business under the name of George Daybell and Sons, Ellen C. Wright, Dermont Huffaker, as administrator of the Estate of D.S. Huffaker, deceased, W.D. Wright, John Van Wagoner, J. Fred Winterton and Marion Winterton.

Come now the defendants above named as appering herein by their joint answer, appearing for themselves and not for the other defendants, for their answer to plaintiff's complaint, filed herein, admit, deny and allege as follows:

1. These defendants admit all of the allegations of said complaint from paragraph 1 to 24 inclusive, admit paragraph 26 of said complaint, also admit all allegations contained in paragraphs 25 and 27 as to the months of April, May and June, but deny each and every allegation as to the month of July and the whole thereof.

2. Answering paragraphs 28 to 33 inclusive thereof these defendnats deny that they have any knowledge or information suffienet to form a belief as to the matters therein stated.

3. Answering paragraph 34 of said complaint these defendants admit that plaintiff claims a right to store the flood waters of said Provo river in its several reservoirs mentioned in its complaint and to release the water so stored at such times and in such quantities as will best serve its interests and the interest of its stockholders and lessees, but as to the right or any right said plaintiff may have in respect thereto these defendants deny they have any knowledge or information sufficient to form a belief.

4. Answering paragraph 35 of said complaint these defendants an-

swearing for themselves only, deny said paragraph and the allegations therein contained, but as to the matters therein alleged against and concerning the other defendants in this action these defendants deny that they have any knowledge or information sufficient to form a belief

5. Answering paragraph 36 of said complaint these defendants admit that they have a right prior in point of time of appropriation of the waters of Provo river, to that of the plaintiff to the extent of their respective appropriations, admit that they have been year after year continuously, during the irrigation season, claiming they have a right to do so, using the water diverted by them and each of them, to the extent of their said respective appropriations but they deny that said use has been wasteful and in quantities largely or at all in excess of that necessary and beneficial for the irrigation of tater lands, and they allege that they expect to continue so to use said water in the quantities and to the extent that the same has heretofore been used unless deprived of such right by a decree of this court. Further answering said paragraph 36 these defendants deny generally and specifically each and every allegation thereof not herein specifically admitted or denied.

6. Answering paragraph 37 of said complaint and the allegations therein contained these defendants admit the rendition of the decrees rendered in 1899 and 1905 as described in said paragraph but as to the remaining allegations in said paragraph these defendants deny that they have any knowledge or information sufficient to form a belief concerning the same.

7. Further answering said complaint these defendants deny generally each and every paragraph thereof and the allegations contained therein except such as are herein admitted or denied.

For further answer and defense and by way of counter-claim for affirmative relief, these defendants allege as follows:

1. That these defendants by themselves, their grantors and predecessors in interest, each and all, appropriated waters of the Provo river which had ~~not~~ theretofore been unappropriated, and they and each

of them continuously used for beneficial and necessary ^{useful} purpose, during the irrigation season of each and every year and for such other periods of time as were necessary for the other beneficial purposes for more than thirty years last past, waters from said river and its tributaries, according to their and each of their respective appropriations and use, openly, peaceably, uninterruptedly, notoriously and adversely against the whole world and particularly against the plaintiff herein, under a claim of right by reason of the prior appropriation and use, in sufficient quantities, the exact quantities thereof in second or acre feet being to these defendants unknown, to irrigate their respective lands and for other beneficial and useful purposes as hereinafter alleged and set forth.

2. That the quantities of water so appropriated and used was and is necessary to irrigate these defendants' lands and to serve the other beneficial uses to which the same have been put and said lands cannot be irrigated and said other beneficial uses cannot be served with a less quantity than that heretofore used and produce crops on said land such as have been heretofore produced and such other purposes be properly served; that in many instances the said lands are unlevel and are composed of gravel beds and bars and a less quantity of water than that heretofore used will be inadequate and insufficient to irrigate such lands and serve the same according to the requirements thereof and such lands will require a greater quantity of water per acre than ordinary lands;

3. That a specific statement of these defendants, the quantity of water appropriated and used by each, except that the same cannot be intelligently designated in second or acre feet, the means by which the same was appropriated and applied, and the number of acres owned by the respective individuals upon which said water was applied, all of which said lands are situated in Wasatch County, Utah, and the other uses to which said water was applied and used are respectfully as follows, to wit:

a. John E. Peterson 8 acres, Chris Michel 24 acres, Felix Martin

30 acres; John U. Buchler 15 acres; and Joseph F. Abegglen 5 acres, by means of what is known as the "Mitchel Ditch", having its source in the Provo river.

PHILIP SMITH SLOUGH.

- b. Joseph F. Abegglen 10 acres; Ulic Abegglen 4 acres and Frederick Remund 14 acres, by means of what is known as the Philip Smith Slough, having its source in said Provo river.

ISLAND DITCH.

- c. *William L. Van Wagoner & John Van Wagoner 8.90 acres; Hyrum S. Winterton & Fred Winterton 8.90 acres; Jesse Nelson 32 acres and William Winterton 8.90 acres, irrigated by means of what is known as the Island Ditch, which has its source in the said Provo river, said ditch being owned and used in common with the Midway Irrigation Company, the waters thereof being distributed by said Midway Irrigation Company to its stockholders and these defendants according to the regulations adopted by said company.*

NELSON DITCH.

- d. Jesse Nelson 23 acres; Jesse Nelson Jr., 20 acres; George Nelson 20 acres and Alfred L. Alder, James T. Alder and W.W. Alder as joint owners 20½ acres, irrigated by what is known as the "NELSON DITCH" which has its source in the said Provo river.

MEAKS BOTTOM SLOUGH.

- e. Wm H. Winterton 17.75 acres irrigated by means of what is known as the Meaks Bottom Slough, the source thereof being from springs, waste water, drainage & seepage, tributaries to said Provo river.

SNAKE CREEK.

- f. William L. Van Wagoner, 9.70 acres; Hyrum S. Winterton 20.50 acres, irrigated by means of a ditch connecting with Snake Creek, the source of which is from springs situated on lands formerly owned by B.M. Smith lying west of main road leading from Midway to Charleston, said springs flowing into said Snake Creek, thence into said ditch by means of dams and headgate and thence onto the said lands.

CHARLESTON-MIDWAY SPRING CREEK DITCH.

- g. Hyrum S. Winterton 12.50 acres; Mrs. E.L. Hanks 5.85 acres; William Winterton 3.75 acres; John B. Fowers 5 acres; George H. Edwards 27 acres; Joseph B. Wright 15 acres; E.L. Brown 10 acres; Ellen C. Wright 28 acres; Dermont Huffaker as administrator of the Estate of D.S. Huffaker, deceased, 25 acres and W.D. Wright 12.50 acres, irrigate by means of what is known as the Charleston-Midway Spring Creek Ditch, having its source in Beaver Pond, said pond being supplied with water from springs, waste water, drainage and seepage, tributaries to said Provo river.

SPRING BRANCH (Charleston Lower Canal)

- h. William Winterton 5.50 acres irrigated from upper springs, William Winterton 17.58 acres irrigated and TWO FISH PONDS supplied from the second group of springs; Wm H. Winterton, 9 acres of land irrigated and TWO FISH PONDS supplied from third group of said springs.

- i. RIVER DITCH.

John Powers' Estate, John B. Powers and Elizabeth Powers, executors, 8.50 acres; P.W. Edwards 3.50 acres, irrigated every two weeks, by means of what is known as the "RIVER DITCH", which has its source in the west fork of Provo river, near Midway-Charleston bridge.

SPRINGER AND TATE SPRINGS.

- j. P.W. Edwards 2.70 acres irrigated from what is known as "SPRINGER & TATE SPRINGS", situated under bench south of Midway Town and by means of a ditch leading therefrom.

BONNER SLOUGH AND SOLDIER HOLLOW.

- k. P.W. Edwards 27.20 acres; George H. Edwards 10 acres, irrigated from What is known as Bonner Slough and that is known as Soldier Hollow, both of which have their sources from drainage, waste water and springs

- l. George H. Edwards 5 acres, irrigated from what is known as "NORTH DRAIN DITCH", which has its source from drainage, waste water and springs, and 14 acres irrigated from what is known as Tate Upper Springs, all tributaries to the said Provo river.

POWERS SPRINGS.

- m. John Powers Estate, John B. Powers and Elizabeth Powers, executors, 28 acres; P.W. Edwards 56 acres; John O. Edwards 10 acres, irrigated from what is known as "POWERS SPRINGS", by means of ditches and sloughs leading therefrom to said lands, said spring being situated on lands owned by said Powers Estate in Section 15, Tp. 4 S. R. 4 E. Salt Lake Meridian.

W.D. WRIGHT SPRINGS.

- n. John O. Edwards 18.13 acres; Joseph R. Murdock 23.22 acres irrigated by ditches having their source in what is known as "Wright Springs", situated on lands owned by said W.D. Wright and the Powers Estate, in Section 15 Tp. 4 S. R. 4 E. Salt Lake Meridian.
- o. George R. Carlile, 20 acres irrigated from a slough having its source in Provo river, and 10 acres irrigated from springs situated on the East side of said Provo river, near said lands.
- p. William W. Casper 15 acres irrigated from a slough having its source in said Provo river.
- q. James Casper 20 acres, irrigated from what is known as Nicken Slough, having its source from drainage, seepage, waste water and springs and by means of a ditch leading therefrom to defendant's lands, used whenever necessary.
- r. J.M. Casper 8 acres, irrigated from what is known as the Jack Watkins Slough, having its source from drainage, seepage, waste water and springs from lands owned by Nelson, Alder, Watkins and others in the vicinity of said slough, said use being when ever necessary.

DAYBELL SPRINGS.

- s. John M. Richie 69 acres; William Daybell 28 acres; George Daybell, George W. Daybell, Fred Daybell and Robert Daybell, doing business under the firm name of George Daybell and Sons, 41 acres; Henry F. Watson 50 acres; George H. Edwards 62 acres, irrigated from what is known as the "DAYBELL SPRINGS", by means of what is known as the Big Slough and what is known as the Murdock Ditch leading from said springs to the lands of defendants herein named, a continuous stream being used during the irrigation season.
- t. John M. Richie 93 acres known as the Enoch Richens Ranch, 47 acres of which is irrigated by means of a slough having its source in the said Provo river near the north line of said lands, and 46 acres of which is irrigated by means of a slough having its source in Provo river near the center of said lands, in such quantities and for such length of time as is necessary to irrigate said lands during the irrigation season.
- u. Emma Wherritt, Lot No. 2 in Block No. 94, Heber City Survey, by means of water conveyed through the Wasatch Irrigation Company's canal and the Heber City Town Ditch and its tributaries, the same being distributed to this defendant under the regulations of the Wasatch Irrigation Company and Heber City and according to the regulations governing other similar water uses and stockholders of said Wasatch Irrigation Company and the residents of said Heber City.

v. Joseph Hatch, 20 acres of land situated just east of Heber City, known as the Green Farm, by means of water from the Wasatch Irrigation Company's canal and by said company distributed to this defendant according to its methods of distribution, and Lots 3 and 4 of Block 78 Heber City Survey of building Lots, and one acre known as Joseph Hatch Coal Yard, just west of Heber City Survey of building Lots near the D. & R.G. Ry depot, the same being under the control, supervision and distribution of said Heber City, a municipal corporation according to its methods of distribution for and during the irrigation season.

w. Joseph Hatch, 28 acres, in Section and Township 4 South of Range 4 East, Salt Lake Meridian, irrigated by means of ditches and flumes constructed and maintained by this defendant, the source of which is from drainage, seepage, waste water and springs from what is known as North Field and from lands in the vicinity of this defendant's ~~lands~~ said lands.

4. That the said lands prior to the irrigation thereof, by the means aforesaid, were barren and sterile and of little or no value, but which have since become of great value because of said irrigation.

5. That as a further defense, these defendants allege that prior to their respective appropriations, as above set forth, the water appropriated by them were surplus and unappropriated and that by said appropriations they did not interfere with or infringe upon the prior rights of any other person or corporation to the water of said river.

6. That these defendants further allege that the claim of the plaintiff in this action, as against these defendants, is without foundation of right and is a cloud upon the title of these defendants.

WHEREFORE, these defendants and each of them pray judgment that their and each of their rights to the quantity of water claimed by them, and each of them, as above set forth, be adjusted and determined and that the same be affirmed and that the plaintiff and all other persons be enjoined from asserting any claim or right to the waters of said river adverse to these defendants to the extent of their and each of their appropriations, claims and use as aforesaid.

These defendants pray for such other and further relief as may be equitable and just and for their costs herein expended.

Wm E. Wilcox
Attorney for these defendants.

STATE OF UTAH,
COUNTY OF WASATCH.

ss.

Hyrum S. Winterton being first duly sworn on oath deposes and says, that he is one of the parties named in the foregoing answer as a defendant, that he has heard read the foregoing complaint and that he knows the contents thereof and that the same is true of his own knowledge except as to matters therein stated upon information and belief and as to those matters he verily believe

Subscribed and sworn to before me this 13th day of April, A.D. 1914.

My commission expires
June 8th, 1914.

Notary Public.

Service of the foregoing answer hereby
accepted, this — day of April A.D. 1914

A. L. Hatch Jacob Evans, A. J. Evans
and A. L. Booth, Attorneys of A. L. Hatch
Attorneys for Plaintiff